Judicial delay: Informalism as panacea

Anuj Bhuwania, South Asian University

Or, How not to tackle judicial delay

"Procedure is just a handmaiden to justice and not its mistress"

Early post-independence disapproval of Tribunalisation

- "It would be unthinkable to allow judicial justice administered by court of law to be superseded by executive justice administered by administrative tribunals. It would be a step backward to erect in the place of deliberate judicial tribunals restrained by formal procedure and deciding according t notions for the time being of administrative officers, unfettered by any rules as to what general interest or good conscience demands. So conceived, the administrative court might well as be regarded "as a court of politicians enforcing a policy, but not a court enforcing a law"- a description which Maitland gave to the Court of Star Chamber
    - -Law Commission of India, 14th Report on Reform of Judicial Administration, 1958

The rhetoric of indigenousness and the Emergency

- 'Debased informalism' in Indian law (Galanter & Krishnan 2004)
- Lok Adalats, Tribunals and PIL
- PIL's status as a 'distinctly Indian' legal phenomenon
- These innovative institutions not bound by Civil Procedure Code, 1908 and Indian Evidence Act, 1872

The Emergency Era Reforms

- The Swaran Singh Committee Report , 1976
- Articles 323A and Articles 323B

Administrative Tribunals Act 1985

- SP Sampath Kumar vs Union of India (1985)
- L. Chandra Kumar vs Union of India (1997)
- Madras Bar Association- I & II (2010 & 2015)

The Mainstream Alternatives subverted: Reforming the Civil Procedure Code

- The 1999 Amendment fixed an outer timeline of 30 days for service of summons on defendants

- Salem Advocate Bar Association-I & II (2003, 2005)

- The 2002 Amendment incorporated a mandatory outer timeline for filing written statement by not allowing the courts to accept it beyond a period of 90 days from the date of service of summons.

- Kailash v. Nanhku (2005): the Supreme Court relaxed this statutorily prescribed deadline by interpreting it as merely directory and not mandatory